



## Filing Receipt

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**DOCKET NO. 52172**

**APPLICATION OF AQUA TEXAS, INC. § PUBLIC UTILITY COMMISSION  
TO AMEND ITS CERTIFICATES OF §  
CONVENIENCE AND NECESSITY IN § OF TEXAS  
COLLIN COUNTY §**

**ORDER NO. 9  
ADDRESSING PENDING MOTIONS**

**I. ADMITTING SUPPLEMENTAL EVIDENCE**

By motion filed on December 23, 2021, Aqua Texas, Inc. moves for the admission of additional evidence. The administrative law judge (ALJ) grants the motion and admits the following supplemental evidence into the record of this proceeding: (a) Aqua Texas’s annual report to the Commission for the year ending December 31, 2020, which is attached as Exhibit 5 to Aqua Texas’s December 23, 2021 pleading; and (b) Independent Auditors Report of Calendar Years Ending December 31, 2019 and December 31, 2020, which is attached as Exhibit 8 to Aqua Texas’s December 23, 2021 pleading.

Aqua Texas did not move for admission of the affidavit of Beirj Bagdasarian, which is attached as Exhibit 9 to its December 23, 2021 pleading. If the company wishes to have this exhibit admitted, it must move for its admission by January 7, 2022.

**II. DENYING MOTION TO TAKE OFFICIAL NOTICE**

Aqua Texas asks that the ALJ take official notice of Essential Utilities’ 2020 annual report. Aqua Texas did not provide a copy of the report, but provided a website address at which the report could be viewed. Having accessed that website, the ALJ has determined that the report is 108 pages long and replete with financial data and assertions. The ALJ assumes that Aqua Texas does not want official notice taken that the report exists. Rather, the ALJ believes that Aqua Texas is seeking official notice of the facts asserted within the report. Because the contents of the report are not “judicially cognizable facts not subject to reasonable dispute in that they are generally known within the jurisdiction of the commission or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” they are not appropriate for official notice under the standard of 16 Texas Administrative Code (TAC) § 22.222. For this reason, the motion to take official notice is denied.

### III. REQUIRING CLARIFICATION

The ALJ has been operating under the assumption that Aqua Texas is seeking to prove that it satisfies the leverage and operations tests by relying upon the financial health of its affiliate, Essential Utilities, Inc. There is a strong basis for that assumption. For example, in Commission Staff's final recommendation, filed on October 19, 2021, Commission Staff expressly based the financial component of their analysis "on the financial statements of Aqua Texas' affiliate, Essential Utilities, Inc."<sup>1</sup> Likewise, on October 27, 2021, Aqua Texas and Commission Staff submitted a proposed notice of approval with the following proposed findings of fact:

36. Aqua Texas's affiliate, Essential Utilities, Inc., has a debt-to-equity ratio that is less than 1.0, satisfying the leverage test.
37. Aqua Texas, through its affiliate, Essential Utilities, Inc., demonstrated that it has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years of operations after approval of the CCN amendment, satisfying the operations test.

In its December 23, 2021 pleading, however, Aqua Texas appears to fault the ALJ for "[a]ssuming Aqua Texas chose to rely upon an 'Affiliate'" to pass the leverage and operations tests.<sup>2</sup> Moreover, Aqua Texas moved for the admission of documents which, it argues, "provides additional evidence in support of the documentation of the financial wherewithal of Aqua Texas," and "documents Aqua Texas' substantial revenues and cash to support its operations in the proposed Service Area."<sup>3</sup> Aqua Texas also argues that other evidence, already in the record of this case, demonstrates Aqua Texas's "financial stability and capability."<sup>4</sup>

By January 7, 2022, Aqua Texas must clarify whether: (1) it continues to seek to prove that it satisfies the leverage and operations tests by relying upon the financial data of its affiliate; or (2) it is now seeking to prove that it satisfies the leverage and operations tests by relying upon its own financial data, without regard to its affiliate.

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<sup>1</sup> See the October 19, 2021 memo of Fred Bednarski attached to Commission Staff's final recommendation.

<sup>2</sup> Aqua Texas's December 23, 2021 pleading at 2.

<sup>3</sup> Aqua Texas's December 23, 2021 pleading at 8-9.

<sup>4</sup> Aqua Texas's December 23, 2021 pleading at 9.

**IV. DENYING MOTION TO RECONSIDER, BUT ALLOWING FURTHER ANALYSIS BY COMMISSION STAFF**

Aqua Texas asks the ALJ to reconsider his rulings in Order Nos. 7 and 8. This request is denied. The ALJ stands by his construction of 16 TAC § 24.11 as laid out in Order Nos. 7 and 8.

However, additional evidence possibly relevant to the analysis under 16 TAC § 24.11 has now been admitted. In light of that additional evidence, Commission Staff must, by January 21, 2022, make a supplemental final recommendation, solely as to the financial aspects of the application.

**V. DENYING REQUEST FOR ABATEMENT**

In light of the above rulings, Aqua Texas's motion to abate pending the outcome of Docket No. 51407 is denied at this time. Aqua Texas is free to re-urge the motion in the future if it believes circumstances warrant.

**Signed at Austin, Texas the 29th day of December 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



**HUNTER BURKHALTER  
CHIEF ADMINISTRATIVE LAW JUDGE**